

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Competitive Product Prices
Competitive International Merchandise Return Service
Agreements With Foreign Postal Operators
Non-Published Rates

Docket No. MC2015-68

Competitive Product Prices
Competitive International Merchandise Return Service
Agreements With Foreign Postal Operators
Non-Published Rates (MC2015-68)

Docket No. CP2015-99

ORDER CONDITIONALLY APPROVING ADDITION OF
COMPETITIVE INTERNATIONAL MERCHANDISE RETURN SERVICE
AGREEMENTS WITH FOREIGN POSTAL OPERATORS (IMRS-FPO)
TO THE COMPETITIVE PRODUCT LIST

(Issued August 4, 2015)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request with conditions.

¹ Request of the United States Postal Service to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) Product to the Competitive Products List and Notice of Filing IMRS-FPO Model Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 10, 2015 (Request).

II. BACKGROUND

On July 10, 2015, the Postal Service filed the Request pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.* The Request provided notice of the creation of an IMRS-FPO Model Agreement (Model Agreement), which contains terms and rates not of general applicability, pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5.

In support of its Request, the Postal Service filed an application for non-public treatment of materials filed under seal; a redacted copy of Governors' Decision No. 11-6; a statement of supporting justification, as required by 39 C.F.R. § 3020.32; a copy of proposed Mail Classification Schedule (MCS) language; a redacted copy of the Model Agreement; a certification of compliance with 39 U.S.C. § 3633(a); and a redacted copy of a related management analysis. Supporting financial workpapers (Financial Model) outlining the method for calculating minimum and maximum IMRS-FPO rates and unredacted copies of the attachments containing redactions were filed under seal.

The Postal Service states that the IMRS-FPO product will fill a gap in currently available postal services by allowing U.S. consumers to conveniently return merchandise purchased from overseas merchants. Request at 3. The Postal Service proposes that the IMRS-FPO product, together with subsequently filed agreements, be added to the competitive product list as a single product. *Id.* at 1. The Postal Service further proposes that, consistent with the Commission's treatment of other Non-Published Rate (NPR) products, subsequently signed IMRS-FPO agreements be filed with the Commission within a reasonable time, *e.g.*, within 10 days of the effective date of the agreement. *Id.* at 1 n.1; *id.* at 2.

In Order No. 2581, the Commission gave notice of Docket Nos. MC2015-68 and CP2015-99, appointed a Public Representative, and provided interested persons with an opportunity to comment.²

III. SUPPLEMENTAL INFORMATION

To clarify the record concerning a typographical error in the Model Agreement and the timing of modifications to IMRS-FPO rates, Chairman's Information Request No. 1 was issued on July 16, 2015.³ The Postal Service provided its response on July 21, 2015.⁴ In response to CHIR No. 1, the Postal Service filed an errata to the Model Agreement on July 21, 2015.⁵ Chairman's Information Request No. 2, which was issued on July 24, 2015, sought additional information concerning the cost coverage of IMRS-FPO agreements.⁶ The Postal Service filed its response on July 28, 2015.⁷

IV. COMMENTS

Comments were filed by the Public Representative.⁸ No other interested person submitted comments. The Public Representative generally supports the addition of the IMRS-FPO product to the competitive product list and believes that the Postal Service's

² Notice and Order Concerning the Addition of Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) to the Competitive Product List, July 14, 2015 (Order No. 2581).

³ Chairman's Information Request No. 1, July 16, 2015 (CHIR No. 1).

⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, July 21, 2015 (Response to CHIR No. 1).

⁵ Notice of the United States Postal Service of Filing Errata, July 21, 2015.

⁶ Chairman's Information Request No. 2, July 24, 2015 (CHIR No. 2).

⁷ Response of the United States Postal Service to Chairman's Information Request No. 2, July 28, 2015 (Response to CHIR No. 2).

⁸ Public Representative Comments on Postal Service Request to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators Product to the Competitive Products List, July 23, 2015 (PR Comments). The Public Representative also filed a motion for late acceptance. See Motion of Public Representative for Late Acceptance of Comments, July 23, 2015. The motion is granted.

Request is “consistent with 39 U.S.C. 3642 and the Commission’s Rules.” PR Comments at 5. However, the Public Representative recommends that the Commission not adopt the Postal Service’s proposal that the IMRS-FPO product, together with any subsequently filed agreements, be reviewed in the same manner as other NPR products. *Id.* at 3. In particular, the Public Representative expresses concerns that although the IMRS-FPO product appears analogous in form to the Global Expedited Package Services–Non-Published Rates 1 (GEPS-NPR 1) product, “it is not similar in use and therefore is inappropriate for treatment as a NPR product.” *Id.* at 6. To support his view, the Public Representative notes that unlike the financial models in the GEPS-NPR products, which generated specific rates offered to each mailer, “the IMRS-FPO financial model simply establishes a minimum and maximum range of rates which may or may not be used to negotiate an IMRS-FPO agreement.” *Id.* From this, the Public Representative concludes that “the Postal Service cannot effectively impose the terms of the IMRS-FPO Model Agreement on a [foreign postal operator].” *Id.* at 6-7.

V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Model Agreement, the Financial Model provided under seal, the responses to CHIR Nos.1 and 2, and the comments filed by the Public Representative.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request entail assigning the IMRS-FPO product to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering similar products, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3).

The Postal Service asserts that significant competition can be found in the international returns shipping market, that other shippers who provide similar services constrain its bargaining position, and that it can neither raise prices nor decrease

service, quality, or output without risking the loss of business to competitors. Request, Attachment 3 at 2. The Postal Service affirms that international returns services are widely available from private firms, and that the addition of the IMRS-FPO product to the competitive product list is unlikely to impact small business concerns. *Id.* at 3-4. As a new service, the Postal Service is unable to provide the views of customers currently using the IMRS-FPO product. *Id.* at 4.

The Commission finds that the international returns shipping market is highly competitive and thus prevents the Postal Service from significantly increasing rates or degrading service without potentially losing business to competitors. This is borne out by the provision of other international returns products by private firms. Further, there is no evidence of an adverse impact on small business concerns. For these reasons, the Commission finds that the IMRS-FPO product is appropriately classified as competitive and that it should be added to the competitive product list.

Cost coverage considerations. Because the IMRS-FPO product is competitive, the Postal Service must also show that it covers its attributable costs, contributes an appropriate share to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. See 39 U.S.C. § 3633(a); 39 CFR 3015.5.

The Postal Service submitted a certification of compliance with 39 U.S.C. § 3633(a), along with a supporting Financial Model that demonstrates that the IMRS-FPO product satisfies the statutory and regulatory requirements. Request at 2-3. The Commission finds that the Financial Model demonstrates that each IMRS-FPO agreement, and thus the product as a whole, will likely cover its costs during the first year. However, subsequent years of the contract are problematic.

The Postal Service states that it anticipates filing updated minimum and maximum rates with the Commission annually.⁹ *Id.* at 5. If the Commission approves a new set of rate ranges, the Postal Service represents that it will renegotiate existing contracts to comply with the new approved rate ranges. *Id.* By its terms, the Model Agreement allows the parties to renegotiate the rates as necessary. Request, Attachment 5, Annex 1 at 3. The Model Agreement also provides that the term of the agreement shall be indefinite. Request, Attachment 5 at 6. In response to CHIR No. 2, question 1, the Postal Service stated that:

If the Postal Service is in negotiations with a foreign post regarding updated rates, but those negotiations are not finalized prior to the implementation of new rates...the Postal Service can terminate the bilateral agreement or file a motion for temporary relief with the Commission to permit the current rates to continue pending an agreed-to modification of new rates by the parties.

Response to CHIR No. 2, question 1.

The Model Agreement has no provision for the automatic adjustment of rates despite the fact that IMRS-FPO agreements will have terms of indefinite duration. In addition, because the Postal Service proposes this service as an NPR product, if approved, the Commission will not review individual agreements or the associated rates until after the agreements have gone into effect. This is the first time the Postal Service has proposed to add an NPR product to the competitive product list with no automatic rate adjustment mechanism and a term of indefinite duration. All prior NPR model agreements approved by the Commission have had terms of limited duration

⁹ In its response to CHIR No. 1, question 1, the Postal Service notes that “[t]he first updated rate ranges will likely be filed during Quarter 1 of Fiscal Year 2016, and then around the same time each year following.” Response to CHIR No. 1, at 3.

(e.g., one calendar year) and/or contained automatic rate adjustment provisions.¹⁰

These provisions help ensure that those products continue to cover their attributable costs. In this case, the lack of an automatic rate adjustment mechanism, in combination with the Model Agreement's proposed term of unlimited duration, raise the risk that IMRS-FPO agreements may not cover costs if the Commission approves an increased rate range but agreement partners are unable or unwilling to renegotiate higher rates.

Given the Postal Service's recognition that the IMRS-FPO rate range will need to be adjusted annually and that the Model Agreement provides for indefinite terms with no rate adjustment mechanism, the Commission finds the Model Agreement must be amended to include language that: 1) automatically adjusts the agreement's prices if it falls below the range most recently approved by the Commission; or 2) automatically terminates the agreement if the agreement's prices fall below the range most recently approved by the Commission. In addition, the Postal Service should, if operationally feasible, consider limiting the duration of the agreement (e.g., to one year). Thus, the Commission finds that the proposed product will likely satisfy the requirements of 39 U.S.C. § 3633(a) if the prices were to automatically adjust, or if the agreement were to terminate when the prices fall below the minimum rates most

¹⁰ See, e.g., Docket Nos. MC2015-55 and CP2015-83, Request of the United States Postal Service to Add Global Expedited Package Services - Non-Published Rates 7 (GEPS - NPR 7) to the Competitive Products List and Notice of Filing GEPS - NPR 7 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, June 19, 2015, Attachment 4 at 4; Docket Nos. MC2015-23 and CP2015-29, Request of the United States Postal Service to Add Global Expedited Package Services - Non-Published Rates 5 (GEPS - NPR 5) to the Competitive Products List and Notice of Filing GEPS - NPR 5 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 24, 2014, Attachment 4 at 4; Docket Nos. MC2013-27 and CP2013-35, Request of the United States Postal Service to Add Global Expedited Package Services - Non-Published Rates 4 (GEPS - NPR 4) to the Competitive Products List and Notice of Filing GEPS - NPR 4 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 21, 2012, Attachment 4 at 7, 8; Docket Nos. MC2013-53 and CP2013-69, Request of the United States Postal Service to Add Priority Mail International Regional Rate™ Boxes – Non-Published Rates to the Competitive Product List and Notice of Filing Priority Mail International Regional Rate Boxes™ – Non-Published Rates Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, June 25, 2013, Attachment 4 at 7, 8.

recently approved by the Commission. As such, the Commission conditionally approves the proposed rates for the IMRS-FPO product, subject to an amendment to the Model Agreement that conforms to the conditions outlined above.

Pursuant to the amended Model Agreement, when the rates in an IMRS-FPO agreement fall below the minimum rates most recently approved by the Commission, such rates should be automatically adjusted to the new rates or the agreement should be terminated. These conditions should sufficiently address the issues raised by the Public Representative concerning the application of NPR status to the IMRS-FPO product.

Once the amended Model Agreement is filed with the Commission, the Commission will notice that filing for comment prior to making a finding on whether the conditions of this Order have been satisfied.

Other Considerations. In its Request, the Postal Service asks that the IMRS-FPO product, and subsequently filed agreements, be treated similarly to how the Commission administers the “GEPS-NPR products.” Request at 5. The Commission agrees that IMRS-FPO agreements, and thus the IMRS-FPO product as a whole, should be administered similarly to the GEPS-NPR products. Accordingly, consistent with its orders approving the GEPS-NPR products, similar reporting requirements are warranted for IMRS-FPO.

The Postal Service shall file a copy of each IMRS-FPO agreement along with the Financial Model inputs used to generate rates for each agreement with the Commission within a reasonable time (e.g., within 10 days of the effective date of the agreement). To facilitate these filings, each contract must bear a unique serial number, which shall be noted in the title of the notice accompanying each agreement.¹¹ In addition, the notice shall indicate the effective date (and termination

¹¹ If multiple IMRS-FPO agreements are filed simultaneously, the title of the notice would indicate the range of serial numbers being filed. The body of the notice would identify each serial number and, as noted below, the effective date of each agreement.

date, if applicable) of each agreement. The agreements and filings related thereto are to be filed in Docket No. CP2015-99.

The Postal Service shall promptly notify the Commission when an IMRS-FPO agreement terminates. Within 30 days of the termination of an agreement, the Postal Service shall file the annual (agreement year) costs, volumes, and revenues associated with that agreement.

Whenever an IMRS-FPO agreement's rates are automatically adjusted pursuant to an automatic rate adjustment provision added to the Model Agreement in response to this Order, the Postal Service shall file a copy of a notice of the adjusted rates along with the Financial Model inputs used to generate the new rates with the Commission.

VI. CONCLUSION

The Commission approves IMRS-FPO as a new competitive product, subject to the Postal Service filing, and the Commission approving, an amended Model Agreement as described above. The revisions to the competitive product list and the MCS are shown below the signature of this Order and will become effective upon Commission approval of the amended Model Agreement.

VII. ORDERING PARAGRAPHS

It is ordered:

1. Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (MC2015-68 and CP2015-99) shall be added to the competitive product list, once the Postal Service files, and the Commission approves, the amendment to the Model Agreement described in the body of this Order.
2. Changes to the Model Agreement and/or changes to the Financial Model must be filed with the Commission at least 15 days prior to their effective dates, pursuant to 39 CFR part 3015.

3. A copy of each IMRS-FPO agreement, along with the Financial Model inputs used to generate the rates for each agreement, must be filed with the Commission within a reasonable time, *e.g.*, within 10 days of the effective date of the Agreement. Each agreement must bear a unique serial number, which shall be noted in the title of the notice accompanying each agreement. In addition, the notice shall indicate the effective dates of each agreement. The agreements and filings related thereto are to be filed in Docket No. CP2015-99.
4. Whenever an IMRS-FPO agreement's rates are automatically adjusted pursuant to an automatic rate adjustment provision added to the Model Agreement in response to this Order, the Postal Service shall file a copy of a notice of the adjusted rates along with the Financial Model inputs used to generate the new rates with the Commission.
5. When any of the IMRS-FPO agreements terminate, the Postal Service shall promptly notify the Commission.
6. Within 30 days of the termination of each agreement, the Postal Service shall file the annual (agreement year) costs, volumes, and revenues associated with that agreement.
7. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in the body of this Order once the Postal Service files, and the Commission approves, the amendment to the Model Agreement described in the body of this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2015-68 and CP2015-99. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International*

Competitive International Merchandise Return Service
Agreements with Foreign Postal Operators

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International*

Competitive International Merchandise Return Service Agreements with Foreign Postal Operators

2500 Negotiated Service Agreements

2510 Outbound International

2510.2 Negotiated Service Agreement Groups

- Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (2510.12)

2510.12 Competitive International Merchandise Return Service Agreements with Foreign Postal Operators

2510.12.1 Description

Competitive International Merchandise Return Service Agreements with Foreign Postal Operators provides rates for acceptance, handling, and transportation within the United States, and international transportation to foreign postal operators, of U.S.-origin return service destined to a foreign merchant, subject to terms and conditions as specified and agreed to by the United States Postal Service and the foreign postal operators.

2510.12.2 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Competitive International Merchandise Return Service Agreements with Foreign Postal Operators

Baseline Reference

Docket Nos. MC2015-68 and CP2015-99

PRC Order No. 2639, August 4, 2015

Included Agreements
